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10/076,223	02/14/2002	Rick Byrd	NAOP/0001	8567
24945	7590	04/07/2005	EXAMINER	
STREETS & STEELS 13831 NORTHWEST FREEWAY SUITE 355 Houston, TX 77040			MCKANE, ELIZABETH L	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/076,223

Applicant(s)

BYRD ET AL.

Examiner

Leigh McKane

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                             |                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>051002</u> . | 6) <input type="checkbox"/> Other: ____.                                                |

*HL**ze*

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, “the cardboard” lacks positive antecedent basis as no cardboard element was recited in either claim 3 or claim 1.

In claim 34, “the oak veneer” lacks positive antecedent basis as no such element was recited in either claim 34, 32, or 23.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

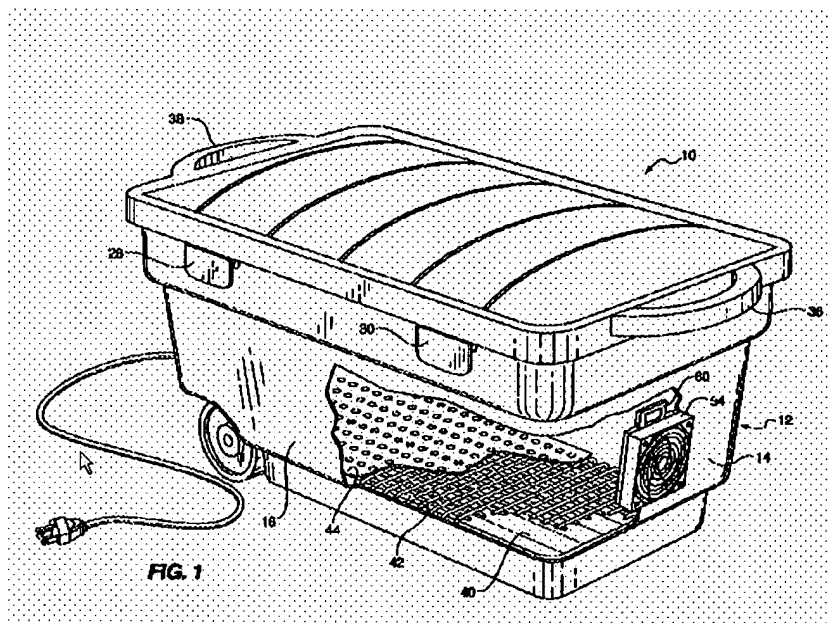
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 1, 2, 5, 7, 9, 23, 25, and 29 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by La Porte (U.S. Patent No. 6,263,591).

La Porte teaches a portable plastic container including an enclosure **10** having a removable top **26**, bottom **22**, side walls **14,16,18,20**, and lifting means **34,36**. The container of La Porte further includes an apparel storage compartment (portion of container above mat **44**), a scent source storage compartment **60** in fluid communication with the apparel storage compartment, and a heat source **40**. A grid **42** of interlocking strips has a first and second side



and rests on the bottom of the container.

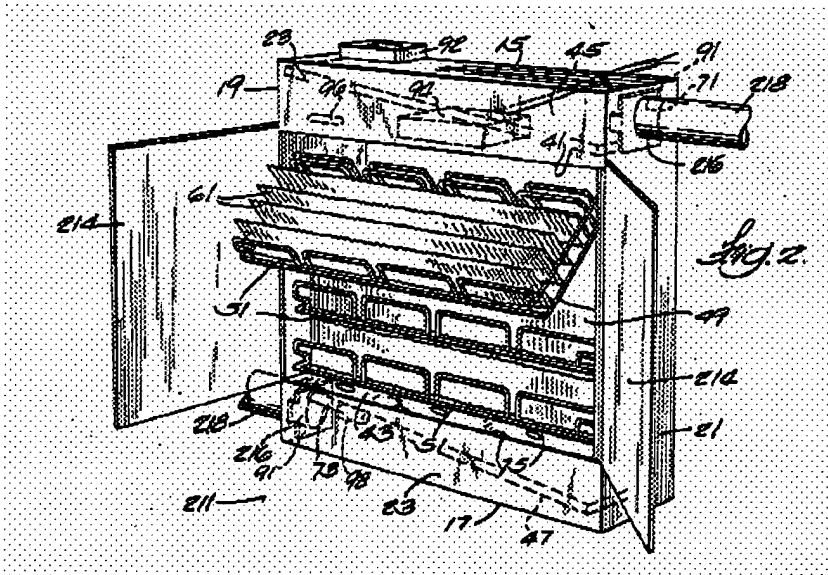
As to the intended use of the claimed invention, it is noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is

capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

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5. Claims 23, 25, 26, 29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Bryson (U.S. Patent No. 4,229,415).

Bryson teaches a deodorization apparatus 11 including a cabinet 13 having top 15, bottom 17, and side 19,21,23,25 walls. Within the interior of apparatus 11 are compartments 45,47 (storage compartments). Several scent source storage compartments 51 are also located within the interior of the cabinet. A heat source 94 is operated to increase the rate of dispensing of the scent within compartments 51. As to the intended use of the claimed invention, it is noted



that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it

meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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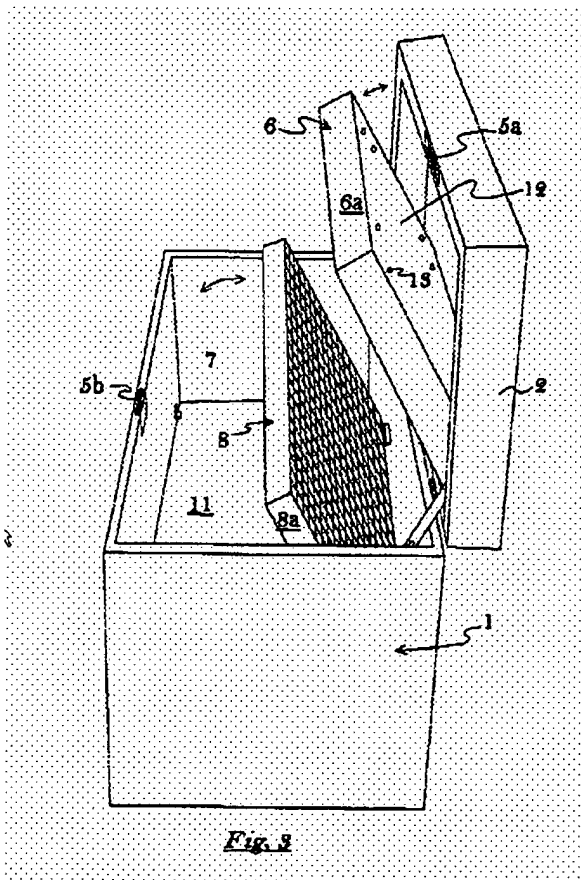
7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-6, 9, 23, 25, 27, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himes (U.S. Patent No. 6,793,881) in view of Bilyeu (U.S. Patent No. 3,119,650).

With respect to claims 1, 2, 5, 9, 23, and 25, Himes teaches a container for storing hunting apparel wherein the container includes an enclosure **1** having a openable top **2**, bottom **11**, and side walls **1a,b,c,d**. The container further includes an apparel storage compartment



(space between panels 6 and 8) and scent source storage compartments 6a,8a. Panel 8 is constructed in the form of a mesh (grid of interlocking strips), which rests upon the bottom of the container and provides support for the apparel. The container is preferably constructed of wood, but may also be fabricated from plastic. See col.4, lines 1-19. Himes is silent with respect to use of a heat source.

Bilyeu discloses that it was known in the art at the time of the invention to employ a heat source to increase the dissipation of a scent source. In the invention of Bilyeu, the scent source is a scent for attracting wild game. See col.2, lines 48-68. As it is well-established in the art of scent production that the addition of heat increases the rate

of dissipation of the scent, as disclosed by Bilyeu, it would have been obvious to one of ordinary skill in the art to add a heat source to the invention of Himes, where one desired to speed up the process of scent transfer from the scent source to the hunting apparel.

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As to claims 3, 4, and 6, Himes discloses that it was known in the art at the time of the invention to fabricate hunting apparel storage boxes of a waxed corrugated cardboard (col.2, lines 50-51). Himes discloses that it is further known to construct the hunting box with a hinged lid or to have a fitted cap (col.3, lines 49-56). Therefore, although not a preferred embodiment, it is deemed obvious to one of ordinary skill in the art to construct the box of a waxed cardboard, as a material readily available and inexpensive. Furthermore, one would have found it obvious to construct the cardboard box in a form known and common in the art.

With respect to claim 27, Himes prefers a wood construction (col.5, lines 5-8) that would resemble “a handsome piece of furniture, not unlike storage trunks typically used for linens and blankets.” See col.6, line 66 to col.7, line 2. It would have been obvious to one of ordinary skill in the art to choose a type of furniture grade wood in keeping with the desired esthetics.

As to claims 29 and 31, Himes discloses that it was known in the art to use leaf bags within a storage compartment to scent hunting apparel contained within storage boxes. See col.2, lines 50-52. As Himes teaches that the scent compartments **6a,8a** may contain natural scent source material for scenting the hunting apparel, it is deemed obvious to place the natural material inside removable bags, as such would have provided easier handling of the natural source material.

10. Claims 10, 11, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himes and Bilyeu as applied to claims 1 and 23 above, and further in view of Friday (U.S. Patent No. 5,690,217).

The combination of Himes with Bilyeu fails to teach or suggest two vertical, parallel



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dividers. Friday evidences the known use of vertical dividers in an apparel storage container.

The container 18, can have one or more divider members 100a, for dividing the storage unit into a plurality of compartments. See col.8, lines 12-13. As Himes discloses simultaneous treatment of hunt-related gear, such as canteens, belts, ammunition holders, hats, gloves, boots, etc. (col.6, lines 47-53), it would have been obvious to compartmentalize the container of Himes, thereby organizing the hunting accessories.

11. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Himes, Bilyeu, and Friday as applied to claim 32 above, and further in view of Baltes (U.S. Patent No. 4,625,432).

The container of Himes does not have a rod for hanging clothes. However, Baltes teaches a fabric drying cabinet wherein a rod 16 is attached to the top of the cabinet. As hanging the hunting apparel permits access of the scent to all parts of the article, it would have been an obvious modification to the invention of Himes. Note that the container of Himes can be fabricated in any desired size.

12. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himes and Bilyeu as applied to claim 1 above, and further in view of La Porte.

Himes with Bilyeu is silent with respect to a lifting means on the container. La Porte, however, discloses a portable container having lifting means (handles 36,38). Although the handle of La Porte are located on the sides of the top (lid), it is deemed obvious to place the handles on another convenient spot, such as the side walls. Moreover, it would have been obvious to provide handles on the container of Himes, to afford ease of handling.

13. Claims 8 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over La Porte.

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With respect to claim 8, the lifting means (handles 36,38) of La Porte are located on the sides of the top (lid). Nevertheless, it is deemed obvious to place the handles on another convenient spot, such as the side walls.

As to claim 28, La Porte teaches casters (unlabeled wheels) on two corners of the cabinet. However, it is within the skill of one in the art to provide the wheels on all four corners where lifting of one end of the cabinet is impractical.

14. Claims 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over La Porte in view of Friday.

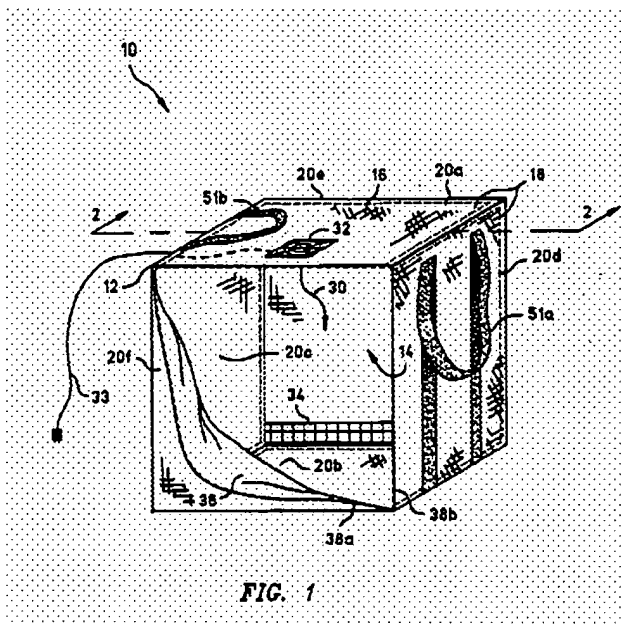
As to claim 32, La Porte fails to teach or suggest two vertical, parallel dividers. Friday evidences the known use of vertical dividers in an apparel storage container. The container 18, can have one or more divider members 100a, for dividing the storage unit into a plurality of compartments. See col.8, lines 12-13. As La Porte discloses simultaneous treatment of several pieces sports equipment (col.3, lines 3-10), it would have been obvious to compartmentalize the container of La Porte, thereby organizing the sports equipment.

With respect to claim 34, La Porte teaches a plastic container which is impenetrable to scent. It is deemed obvious, when using other materials to form the container, to use a plastic layer closest to the source of odor, in order to prevent cross-contamination between articles being deodorized.

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15. Claims 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pajak et al (U.S. Patent No. 5,528,840) in view of La Porte.

With respect to claims 12, 13, 15, 17, 18, 20, and 22, Pajak et al teaches a portable, non-



rigid baglike container 10 made of a waterproof outer fabric and a waterproof inner including top 20a, bottom 20b, and side 20c,d,e,f walls. An apparel storage compartment 14 formed therein and a heat source 32 (col.4, lines 62-67). The container 10 further includes handles 51a,b attached to sidewalls 20c,d. A zipper 38a,b seals the device. Styrofoam panels 20 provide intrinsic retention of thermal energy. Pajak et al is silent with respect to

a scent source storage compartment.

La Porte, however, discloses a similar container for apparel treatment, wherein a scent source storage compartment 60 is coupled with the fan 54 for scent dispersion throughout the container. As both Pajak et al and La Porte are directed to the drying of wet apparel, it would have been obvious to modify the apparatus of Pajak et al to include the scent source storage compartment of La Porte in order to overcome the bad odors created by wet apparel.

As to claims 14 and 16, the fabric used by Pajak et al for the outer container may be polyester and the inner lining may be nylon (col.3, lines 56-60). However, Pajak et al also teaches that "other material not herein mentioned may be used." It is deemed to be within the

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purview of one of ordinary skill in the art to choose other known waterproof fabric materials for use in the container of Pajak et al.

With respect to claim 19, Pajak et al discloses an opening in the sidewall. La Porte, however, evidences that it was known in the art to provide access openings through the top of the container. It would have been obvious to one of ordinary skill in the art to modify the container of Pajak et al to be accessible through the top, as doing such is already known in the art and would involve no originality.

As to claim 21, Pajak et al is silent with respect to a material from which the zipper **38a** is fabricated. Regardless, it is certainly within the skill of one in the art to choose an appropriate material from which to fabricate the zipper of Pajak et al.

16. Claims 24 and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Bryson as applied to claim 23 above, and further in view of Dhaemers (U.S. Patent No. 5,546,678).

With respect to claim 24, the cabinet of Bryson is opened by a single door **23** forming the front of the cabinet and is sealed by a gasket (col.2, lines 49-54). Dhaemers discloses a cabinet wherein the front is formed by two doors **18,19**. It would have been obvious to substitute the double, gasketed doors of Dhaemers for the single door of Bryson, as doing so is a simple modification involving no invention.

As to claim 28, Bryson is silent with respect to casters on the cabinet. Dhaemers discloses attaching casters (wheels) **614,616** to two corners of the cabinet. It would have been obvious to attach casters to the cabinet of Bryson for ease of movement. Moreover, it is within the skill of one in the art to provide the wheels on all four corners where lifting of one end of the cabinet is impractical.

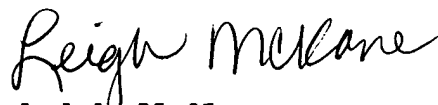
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***Conclusion***

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (6:30 am-4:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Leigh McKane  
Primary Examiner  
Art Unit 1744**

elm  
4 April 2005